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GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
STANLEY "SKIP" PRUSS, DIRECTOR

KEN ROSS
COMMISSIONER

BILL ANALYSIS

BILL NUMBER: House Bill 6141

TOPIC: Uniform Securities Act; Investment Adviser Representatives; grandfathering of certain representatives

SPONSOR: Representative Meekhof

CO-SPONSORS: Reps. Rogers, Hildenbrand, Opsommer, Miller, Genetski, Denby, Schuitmaker, Agema, Proos, Byrum, Hammel, LeBlanc, Schmidt and Pearce

COMMITTEE: Insurance

DATE: May 12, 2010

POSITION

The Office of Financial and Insurance Regulation (OFIR) opposes this legislation.

PROBLEM/BACKGROUND

In December 2008, the Michigan Legislature enacted the Uniformed Securities Act (USA), MCL 451.4101 et seq., effective October 1, 2009. USA is based on the 2002 Uniform Securities Model Act (Model Act) drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

The USA was based on three themes:

- facilitate uniformity and cooperation among relevant state and federal governments and self-regulatory organizations.
- consistency with the NCCUSL.
- required updates to facilitate technological advancements intended to permit electronic filing in central information depositories.

Section 404 of the USA requires that Investment Adviser Representatives (IARs) conducting business in Michigan to be registered, unless otherwise exempt as provided by statute, rule, or order of the administrator.

Subsection 412(5) of the USA allows the Commissioner to establish a rule or order requiring that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals. An order under this act may waive an examination as to an individual; a rule under this act may waive an examination to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of the investor.

DESCRIPTION OF BILL

HB 6141 amends subsection 404(2) of the USA by adding language that exempts an individual acting as an IAR in Michigan on the effective date of the amendatory act from sitting for examination in order to be registered if he or she:

- has taken and passed either the Uniform Investment Adviser State Law Examination (S65) or the Uniform Combined State Law Examination (S66) within the past two years;
- has practiced without interruption, since passing either of the previously noted examinations;
- has successfully passed either the (1) Investment Company Product Representative (Series 6) and the Uniform Securities Agent State Law Examination (S63); (2) the General Securities Representative (Series 7) and Uniform Securities Agent State Law Examination (S63); or
- is a member of a corporate registered investment adviser.

SUMMARY OF ARGUMENTS

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It exempts individuals acting as an IAR in Michigan as of October 1, 2009, from the USA's requirement of having to pass an examination in order to be registered as an IAR.

Con

Exemption Based on Passage of Series 6 and Series 63 or Series 7 and Series 63

This legislation exempts individuals that have been acting as IARs in Michigan who have taken and passed the Investment Company Products/Variable Contracts Limited Representative (Series 6) and the ~~Uniform~~ Securities Agent State Law Examination (Series 63), or have taken and passed the Series 7 and the Series 63 from the IAR examination requirements. Not one of these examinations tests the core competencies that are relevant to IAR. These tests are limited in scope and were developed to determine whether an examinee possesses the requisite knowledge to act as a stock broker and not an IAR. A stock broker, being paid on a commission basis, is not responsible for providing the same or similar type of advice as an IAR, who provides particular financial planning advice and acts as a fiduciary to his or her clients.

There is little if any correlation between these more general examinations and the day to day activities of an IAR, let alone the legal, ethical, and economic knowledge an IAR must possess. The fact that there are more IAR specific tests available proves the point that the industry recognizes a specific knowledge base and threshold to conduct oneself as an IAR. These examinations do not provide OFIR with an objective means of determining whether the interests of Michigan citizens are adequately protected by properly educated IARs.

In contrast, the examination requirements developed by OFIR are clear and consistent with all of the other states that have adopted the Model Act. OFIR requires the IAR applicant to successfully complete the Series 65, or the Series 66 and Series 7. These tests objectively measure the core competencies relevant to the investment adviser profession. The examination requirements are important to OFIR and the citizens of Michigan because:

- IARs have a fiduciary responsibility to their clients.
- The Series 65 and 66 Examinations require the examinee to possess a basic understanding of portfolio analysis and management; economic theories; ethic behavior that is core to the IA profession; suitability and federal and state laws and regulations.
- Michigan's examination requirements are consistent with those of other states that have enacted the Model Act. Uniformity is one of the overreaching goals of the Model Act.
- IARs do not have continuing education requirements so the exam requirement serves and an important gauge for determining whether an IAR possesses the requisite knowledge of core concepts, ethics and fiduciary duties.

Exemption Based on Undefined Term

The language of the bill presents a significant technical issue. Section 402(2)(C) of the legislation uses the phrase "member of a corporate registered investment adviser." Corporations do not have "members" and "corporate registered investment adviser" is not a defined term in the USA, the Model Act, or even in the Investment Advisers Act of 1940. There are state registered Investment Advisers (25 million or less in assets under management; federal registered Investment Advisers with 25 million or more in assets under management). This language would create confusion in the industry as well as among other states that adopted the Model Act.

Narrowing of Exemption Based on Continuous Service

The language of the bill is more restrictive than the exemptions promulgated by OFIR in the transition orders. OFIR did not limit the exemption from the examination requirement to only those individuals who had taken and passed the required examination within a two year time frame. OFIR is unaware of any reasonable rationale which allows only those persons who took the exam within two years (determined by the date the bill takes effect) to be exempt from the examination requirements. OFIR is also unaware of the basis for confining the exemption to persons who passed the examinations while also having no break in service. OFIR's position as stated in the transition orders that an individual could have at most a two year break in service is consistent with industry practice and standards for both IARS and securities agents

FISCAL/ECONOMIC IMPACT

OFIR has identified the following revenue or budgetary implications in this bill:

- (a) To the Office of Financial and Insurance Regulation: Indeterminate

Budgetary:

Revenue:

Comments:

- (b) To the Department of Energy, Labor & Economic Growth: None

Budgetary:

Revenue:

Comments:

- (c) To the State of Michigan: None

Budgetary:

Revenue:

Comments:

- (d) To Local Governments within this State: None

Comments:

OTHER STATE DEPARTMENTS

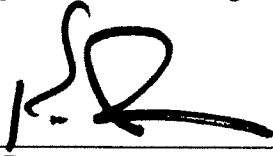
None.

ANY OTHER PERTINENT INFORMATION

None.

ADMINISTRATIVE RULES IMPACT

The proposed legislation would amend 2008 PA 551, the Uniform Securities Act (2002). OFIR has general rulemaking authority under this act.

A handwritten signature in black ink, appearing to be 'K. Ross', written over a horizontal line.

Ken Ross
Commissioner

5-12-10

Date

